



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/674,188

09/29/2003

David A. Selby

RSW920030014US1

2671

47121 7590 03/23/2010  
(SAUL-END) PATENT DOCKETING CLERK  
IBM Corporation (SAUL-END) C/O Saul Ewing LLP  
Penn National Insurance Tower  
2 North Second Street, 7th Floor  
Harrisburg, PA 17101

EXAMINER

LASTRA, DANIEL

ART UNIT

PAPER NUMBER

3688

MAIL DATE

DELIVERY MODE

03/23/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/674,188	<b>Applicant(s)</b> SELBY, DAVID A.	
	<b>Examiner</b> DANIEL LASTRA	<b>Art Unit</b> 3688	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 January 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 9-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. Claims 9-22 have been examined. Application 10/674,188 (INCENTIVE-BASED WEBSITE ARCHITECTURE) has a filing date 09/29/2003.

#### ***Response to Amendment***

In response to Non Final Rejection filed 10/07/09, the Applicant filed an Amendment on 01/07/10, which amended claims 16-20.

#### **Claim Rejections - 35 USC § 103**

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9-13 and 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Niu (US 2002/0062245) in view of Herz (US 2001/0014868).

Claims 9 and 16, Niu teaches:

A method of influencing the actions of users of an interactive content- delivery system, comprising the steps of:

identifying probabilities of selection with respect to all selections offered by said interactive content-delivery system (see paragraphs 77-81, 89);

and

presenting users of said interactive content-delivery system with incentives based upon said probabilities (see paragraphs 77-82; 89, 97,115).

Nui does not expressly teach:

and designating certain of said selections as low probability selections based on the identified probabilities, whereby said low probability selections receive higher-value incentives than selections having higher probability of selection than said low probability selections. However, Herz teaches that it is old and well known in the promotion art to offer customers bigger discounts or offers when said customers have a lower probability of accepting said offers (see paragraphs 167, 303). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Nui would offer customers bigger discounts or offers when said customers have a lower probability of accepting said offers, as taught by Herz in order to increase the probability that said customers respond to said offers and become loyal customers.

Claims 10 and 17, Niu teaches:

wherein said identifying step includes at least the step of: estimating probabilities of selection for each possible selection offered by said interactive content delivery system if historical user data for said interactive content delivery system is unavailable (see paragraph 41).

Claims 11 and 18, Niu teaches:

wherein said identifying step further comprises at least the step of analyzing historical user data for said interactive content delivery system to identify probability of selection based on said historical user data (see paragraph 42).

Claims 12 and 19, Niu teaches:

wherein said step of analyzing historical user data comprises at least the step of performing historical analysis of paths taken by users who have not been presented with incentives (see paragraph 43).

Claims 13 and 20, Niu teaches:

wherein said step of analyzing historical user data is continually updated with new historical user data obtained after users of said interactive content-delivery system have been presented with incentives (see paragraph 49).

Claim 8, Niu teaches:

A method of managing website visitors, comprising the steps of:

receiving a content selection from a website user (see paragraph 41);

analyzing said content selection and determining probabilities associated with the selection of all sub-choices presented to said user based on said content selection (see paragraphs 41, 97);

presenting incentives associated with each sub-choice based upon said probabilities (see paragraph 89); and

repeating the above steps until a desired end choice has been selected (see paragraph 115 “don’t offer a buyer an incentive as said buyer does not need an incentive to buy”).

3. Claims 14-15 and 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Niu (US 2002/0062245) in view of Herz (US 2001/0014868) and further in view of Mankoff (US 2003/0028518).

Claims 14 and 21, Niu teaches:

wherein said incentives are selected based on gaming theory and include positive (see paragraph 115 “offering a searcher a discount as an incentive to buy”) but does not expressly teach and negative incentives. However, Mankoff teaches that it is old and well known in the promotion art to offer negative incentives to consumers where the value of said incentives decreases with time in order to trigger said consumers to buy a product earlier in time (see paragraph 33). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Niu would modify his invention to offer negative incentives to consumers, as taught by Mankoff in order to trigger said consumers to buy a product earlier in time.

Claims 15 and 22, Niu teaches:

wherein said interactive content-delivery system comprises a web-based e-commerce site (see paragraph 41).

### ***Response to Arguments***

4. Applicant's arguments filed 01/07/10 have been fully considered but they are not persuasive. The Applicant argues that Niu does not teach “identifying probabilities of selection with respect to all selections offered by said interactive content-delivery system”. The Examiner answers that Niu teaches a program that decides to send a promotion based upon a rule set by a manager where the manager tie a promotion to a probability and where said rule set is based upon all selections offered by a content delivery system, such as “viewed between X and Y products”, “viewed between X and Y pages”, “has shopping cart containing X and Y items” “probability of returning” (see

Art Unit: 3688

paragraphs 68-78). Therefore, contrary to Applicant's argument, Nui teaches Applicant's claimed invention.

The Applicant argues that Herz does not teach probabilities of selection and therefore, according to the Applicant, cannot teach designating certain selections as low probability nor assigning higher incentives to low probability selections. The Examiner answers that Herz teaches selecting offers that are likely to result in profitable sales based upon the probability of said offers of being accepted by a consumer (see paragraph 37) and offering a bigger offer value to customer that have a lower probability of accepting an offer (see paragraph 167, 303). Therefore, contrary to Applicant's argument, Herz teaches Applicant's claimed limitation.

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LASTRA whose telephone number is 571-272-6720 and fax 571-273-6720. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LYNDIA C JASMIN can be reached on (571) 272-6782. The official Fax number is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/DANIEL LASTRA/  
Primary Examiner, Art Unit 3688  
March 19, 2010